

September 18, 2017

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *General Communication, Inc., Transferor, and GCI Liberty, Inc.,
Transferee, Applications for Consent to Transfer Control of
International and Domestic Section 214 Authority, WC Docket No. 17-114*

Dear Ms. Dortch:

Alaska Communications files these brief supplemental comments in response two recent filings by the applicants attacking the expert witness testimony offered by Alaska Communications in its Petition to Deny,¹ and replying to questions from Commission staff about the applicants' public interest obligations and financial commitments should the proposed transaction be approved.²

Because this is the first opportunity Alaska Communications has had to respond to the substance set forth in those two filings by the applicants, we respectfully request that these supplemental comments be included in the record of the above-captioned proceeding.

In the Joint Opposition, the applicants deny that the transaction poses a substantial threat of harm to the public interest, stating there will be "no transaction-specific harms, only benefits."³ The applicants characterize GCI's pricing and access policies with respect to its TERRA network as old news and not transaction-specific. However, it is the applicants that claim the sole public interest benefit to arise from this transaction will be GCI's increased purchasing power and ability to dominate the Alaska market through improved access to capital

¹ Joint Opposition of Applicants to Petition to Deny and Condition and Reply to Comments in WC Docket No. 17-114 (filed July 5, 2017) ("Joint Opposition").

² Letter from Robert Hoegle, Counsel to Liberty Interactive Corporation ("LIC"), and John Nakahata, Counsel to General Communication, Inc. ("GCI"), to Marlene H. Dortch, FCC Secretary, in WC Docket No. 17-114 (filed Aug. 22, 2017) ("August 22 Letter").

³ Joint Opposition at 3.

and a larger platform.⁴ They fail to explain why this larger, more aggressive entity poses no increased threat to competition and thus to consumers in Alaska.

The Joint Opposition provides little insight into the specific harms identified by Alaska Communications and Quintillion in their Petitions to Deny. Alaska Communications is accused of “repackaging” a prior statement by Mr. Blessing,⁵ but this is untrue; the prior statement in question concerned an older data set and a different economic analysis. Moreover, the Joint Opposition fails to respond to the substantive analysis provided by Mr. Blessing, showing how GCI has abused its market position in its pricing of TERRA services, to the detriment of not only consumers but also USAC’s programs, and supporting the conclusion that a larger, richer GCI would be in an even stronger position to exercise market power, absent appropriate regulatory safeguards.⁶ Quintillion similarly raised substantive objections to approving the proposed transaction without meaningful conditions, both to prevent abuse of the monopoly position enjoyed by TERRA, and to restrain the combined entity from throttling, over-subscription, excessive overage charges, and other abusive practices for which GCI is known.⁷ The Joint Opposition offers no serious reply to these concerns. TERRA pricing and competitive access, and broadband access in general, are topics that GCI simply prefers to avoid.

As subsequently disclosed by the applicants, moreover, *there are no evident benefits for consumers* arising from this transaction. In the August 22 Letter, the applicants state that, notwithstanding their prior statements to this Commission about the purported benefits of the proposed transaction, they are making no commitment to improve their fixed broadband offerings or expand their financial commitments under the Alaska Plan.⁸ They tout GCI’s “improved access to capital markets” and “less vulnerability to Alaska-specific economic factors”⁹ but fail to explain how this will benefit their Alaska customers. In fact, they admit that, rather than produce any cost savings or expanded services, the transaction will yield zero operational synergies.¹⁰ Similarly, with respect to mobile services, the applicants promise no transaction-specific benefits. They intend to continue drawing federal support for their fixed and mobile operations, apparently expecting that no consideration be given to their greater size,

⁴ E.g., Joint Opposition at 4.

⁵ Joint Opposition at 5 & n.14.

⁶ Petition to Deny of Alaska Communications, in WC Docket No. 17-114, pp. 16-18 (filed June 19, 2017).

⁷ Petition to Deny of Quintillion Subsea Operations, LLC and Quintillion Networks, LLC in WC Docket No. 17-114, pp. 16-21 (filed June 19, 2017).

⁸ August 22 Letter at 1. See generally Connect America Fund, 31 FCC Rcd 10139 (2016) (“*Alaska Plan Order*”).

⁹ August 22 Letter at 1.

¹⁰ *Id.*

increased stability, and better access to capital, but they decline to expand in any way the performance commitments made by GCI under the Alaska Plan.¹¹

What the applicants fail to mention is that, by accepting federal support under the Alaska Plan and other FCC programs, GCI already is committed to completing specified service deployments and maintaining those services for a period of years, based on assurances given by GCI at the time it opted into the plan. The applicants offer, through their combined resources, no incremental benefit to the public whatsoever. Rather, they imply that the merger represents the only way for GCI to meet its existing commitments – that without it GCI threatens to default on the obligations it so recently entered into. In effect, GCI wants the Commission to believe it is prepared to renege on its prior commitments, rather than offer any improved outcomes for consumers.

The applicants also argue that paragraph 84 of the *Alaska Plan Order* should not apply to this transaction.¹² However, paragraph 84 very plainly does apply and requires an affirmative finding that the proposed transfer of support from GCI to the combined “GLIB” entity (GCI Liberty, Inc., the “transferee” in this proceeding) will serve the public interest. The Commission specifically delegated to the Wireless Telecommunications Bureau the authority in any transaction involving an Alaska Plan participant that is a CETC – as GCI is – to determine whether it would serve the public interest to permit the transfer of the CETC support and public interest obligations to another entity.¹³ In so doing, the Commission denied the broader Alaska Communications proposal that *no such transfers* of support be permitted in the context of a participating LEC transfer of control or assignment of licenses (or customers). Instead the FCC opted to have the Bureau examine the impact in each particular case. That examination is required here.

The applicants claim there is “no transferring carrier” in this case because GCI’s customers will remain affiliated with GCI, not some other Alaska Plan recipient.¹⁴ However, the Commission did not split hairs so finely in the *Alaska Plan Order*. As part of the transfer of control of GCI to GLIB, control of GCI’s support and obligations will be transferred. The Commission delegated to the Bureau the question, “to determine in the context of a particular proposed transaction involving a competitive ETC that is an Alaska Plan participant the extent to which a transfer of a proportionate amount of the transferring carrier’s Alaska Plan support, along with what specific performance obligations, would serve the public interest.”¹⁵ It made no distinction between transfers of control of Alaska Plan participants to an Alaska-based entity versus a non-Alaska entity.

¹¹ *Id.* at 2-3.

¹² *Id.* at 2-3, citing *Alaska Plan Order* ¶84.

¹³ *Alaska Plan Order* ¶84.

¹⁴ August 22 Letter at 3.

¹⁵ *Alaska Plan Order* ¶84.

It is reasonable for the Commission to ask why GCI and LIC do not offer some added value in the proposed transaction – after all, the FCC is not obliged to find the transaction will serve the public interest in the absence of any affirmative evidence. It is more than reasonable – in fact, it is mandatory – that the Commission demand some incremental benefit to the public when the transaction also carries with it substantial risk of harm to competition and consumers, as this one does, and as the record demonstrates.¹⁶ In addition, paragraph 84 of the *Alaska Plan Order* specifically requires a finding, in the context of this particular proposed transaction, involving a competitive ETC that is an Alaska Plan participant, whether and to what extent permitting the transfer of GCI’s Alaska Plan support, “along with what specific performance obligations,” would serve the public interest.¹⁷

For all of these reasons, the Commission should deny the transaction or impose the conditions recommended in Alaska Communications’ Petition to Deny, namely:

- Requiring GLIB to identify routes where federal subsidies are intended to be used, and providing an opportunity for public input (to ensure support is used for the purpose for which it is intended, such as to bridge broadband gaps in unserved areas);
- Requiring non-discriminatory access to all subsidized infrastructure; and
- Requiring GLIB to enter into service restoration agreements with other telecommunications carriers on commercially reasonable terms.

Please direct any questions regarding this matter to me.

Very truly yours,



Karen Brinkmann
Counsel to Alaska Communications

cc: Counsel to GCI
Counsel to LIC

¹⁶ In addition to the Petitions to Deny of Alaska Communications and Quintillion, discussed above, concerns about this transaction and GCI’s monopoly practices, and recommendations that appropriate conditions be imposed on GLIB, were filed in this docket by a variety of representatives of Alaska consumers. *E.g.*, Letter from Harry T. Crawford to Marlene H. Dortch in WC Docket No. 17-114 (filed June 29, 2017); Letter from Alaska State Senator Tom Begich to Marlene H. Dortch in WC Docket No. 17-114 (filed July 3, 2017); Letter from Alaska State Representative Zach Fansler to Marlene H. Dortch in WC Docket No. 17-114 (filed July 5, 2017).

¹⁷ *Alaska Plan Order* ¶84.